



2004 Indiana Election Legislation Summary

Prepared by the Indiana Election Division

This document summarizes the election-related legislation that passed the Indiana General Assembly and became law in 2004. Bills may be obtained by contacting the Legislative Information Center at 200 West Washington Street, Room 230, Indianapolis, Indiana 46204-2731; (317) 232-9856, or by downloading documents from the Access Indiana homepage: www.in.gov/legislative.

The 2004 Regular Session of the Indiana General Assembly enacted the following election-related bills:

Public Law 2-2004 (Senate Enrolled Act 86): Address notations on poll lists

Public Law 9-2004 (House Enrolled Act 1360): Various election law matters

Public Law 11-2004 (Senate Enrolled Act 36): Ballot language for constitutional amendments

Public Law 14-2004 (Senate Enrolled Act 72): Various election law matters

Public Law 79-2004 (House Enrolled Act 1345): Leaves of absence for elected officials called to active duty in the armed services

The following bills made technical (or non-election related) amendments to the Indiana election code:

Public Law 4-2004 (House Enrolled Act 1087) Filling office vacancies in conservancy districts Public Law 97-2004 (Senate Enrolled Act 106) Technical corrections

Public Law 98-2004 (Senate Enrolled Act 263) Recodification of Title 33 (Courts and Court Officers) including changes to Title 33 cross references in Title 3

VOTER REGISTRATION

Statewide Voter Registration File

The statewide voter registration system must include at least the following information: 1) voting history information; 2) the source of the VR application (mail, agency, etc.); 3) listing of previous jurisdictions where registered; 4) information concerning the identification documentation submitted by the voter to comply with the Help America Vote Act of 2002 (HAVA); 5) documentation of all changes made by the voter in the VR record; and 6) documentation concerning all notices sent by the county voter registration office to the voter.

The statewide voter registration system must include the following features: 1) absentee ballot information management; 2) the ability for a county to transmit reports and statements to the election division; 3) election and poll worker management features; 4) backup features; 5) signature digitizing features; 6) street file management features; 7) information management features, including audit capabilities to determine if required voter list maintenance has been performed; 8) help desk support; 9) data retrieval that would enable a county election board (in counties where a separate county voter registration office exists) to view voter registration records to obtain information regarding candidate residence and for absentee ballot application purposes; and 10) additional features determined by the secretary of state and the co-directors of the election division.

(SEA 72, Secs. 29-39; Effective date: July 1, 2004 [but not implemented until 2006]; Citations affected: IC 3-7-26.3-22; 3-7-26.3-23; 3-7-26.3-24; 3-7-26.3-25; 3-7-26.3-26; 3-7-26.3-27; 3-7-26.3-28; 3-7-26.3-29; 3-7-26.3-30; 3-7-26.3-31; 3-7-26.3-32)

Obsolete references to the January 1, 2004 starting date for the statewide voter registration system specified by former law before the enactment of HAVA are repealed. (SEA 72, Secs. 27 and 28; Effective date: March 16, 2004; Citations affected: IC 3-7-26-2; 3-7-26-8)

Identification Documentation Requirement for Certain Voters

A cross reference is added to clarify that the county voter registration office shall update the county's voter registration records to include information regarding identification documentation provided to poll workers on election day. Storage of an optically scanned image of identification documentation is permitted. The provisions regarding the additional documentation requirements for certain voters continue after January 1, 2006 since IC 3-7-27-20 expires January 1, 2006. (SEA 72, Secs. 40 and 41; Effective date: March 16, 2004 and July 1, 2004; Citations affected: IC 3-7-27-20; 3-7-27-20.2)

County Voter Registration Maintenance Programs

A county voter registration office may conduct a voter list maintenance program for that county only. Previously, only the state could perform these voter list maintenance programs like the "duplicate voter registration elimination program" postcards that were sent out to voters during even numbered years. Counties must follow both state and federal laws in conducting any voter list maintenance program.

The first step in conducting a voter list maintenance program is to determine in a uniform and non-discriminatory manner whether a voter's residence address, as listed in the voter registration record, is current. A county may only use information from one or more of the following sources to make the determination about whether a voter's registration address is current: (A) returned jury duty notices; (B) returned notices sent to *all* voters in the county; (C) information from the Postal Service National Change of Address (NCOA) program, such as when a "yellow sticker" generated by the United States Postal Service using NCOA information is attached to a piece of mail sent out by county election offices; or (D) information from the BMV that a voter has turned in their driver's license in another state to obtain a license there. Other sources of information concerning the address of voters (such as returned mail from other governmental offices, returned mail received by political parties or candidates as a result of campaign activity, or information provided by precinct committeemen or poll workers) **cannot** be used under this statute.

Once information is received from a source identified above indicating that the voter's registration address is not current, the county must send a notice by first class US mail to the voter. The notice must 1) be forwardable to the voter; 2) contain an attached prepaid postage return card on which the voter may state his or her current address; and 3) contain a notice advising that the voter's registration will be placed on "inactive" status if the voter does not respond by a specified date, and will be cancelled if the voter fails to vote or confirm the voter's registration during the time period beginning the date of the notice and ending the day after the date of the second general election for Federal office that occurs after the date of the notice.

For example, a notice sent prior to the 2004 general election must substantially be as follows:

"If you do not return the postcard, then your voter registration(s) identified on the return postcard will be placed on 'inactive status.' This means you will still be allowed to vote if:

1. You go to the polls to vote (or cast an absentee ballot) during 2004, 2005 or 2006; OR
2. You confirm with the county voter registration office that you still live at the address listed on your voter registration and you are otherwise still qualified to vote.

If you do not vote in 2004, 2005 or 2006, or confirm your address on your voter registration, then your voter registration(s) as identified on the attached return card will be cancelled after the November 2006 election."

If the voter responds to the notice by providing a different residence address, the county voter registration office shall update the voter's record if the address is in the county, and shall cancel the voter's record if the address is outside the county.

If the voter fails to respond to the notice, the “inactive” voter’s name remains on the rolls at that address for the next two general elections (2004 and 2006, for example). If the voter does not vote or attempt to vote at the “inactive” address at any election before November 2006, or otherwise confirm the voter’s registration address, then the county voter registration office must cancel that registration after the November 2006 general election.

The procedure is slightly different if the county chooses to mail a notice to all voters in the county. Under this procedure, voters are asked to respond by confirming their voter registration address by a specific date. There does not need to be a follow-up notice under this procedure if the voter is told in the initial mailing what will happen if the voter’s registration becomes inactive. (SEA 72, Sec. 49; Effective date: March 16, 2004; Citation affected: IC 3-7-38.2-2)

County Voter Registration List Maintenance Affidavit

The affidavit concerning voter list maintenance filed under current law by the circuit court clerk or county voter registration board members is to be filed with the election division (rather than the county auditor). The filing with the county auditor reflected a former law which required the auditor to withhold the clerk or board member’s salary for the month of October if the voter list maintenance was not conducted. (SEA 72, Sec. 17, Effective date: March 16, 2004; Citation affected: IC 3-7-12-27)

Definition of “Expedited Basis” for Voter Registration Transactions

HAVA requires voter registration transactions to be performed on an “expedited basis” as part of statewide voter registration system, but does not define the term. State law defines “expedited basis” to mean that a county voter registration office must perform these transactions within 48 hours after receiving document that requires the transaction. State law also sets forth a special definition of “expedited basis” that applies when a voter registration application containing a partial social security number must be submitted to the federal Social Security Administration for verification. (SEA 72, Sec. 2; Effective date: March 16, 2004 [but not implemented until 2006]; Citation affected: IC 3-5-2-23.2)

Processing Voter Registration Applications at “Full Service Agencies”

If a person who is registering to vote at a “full service agency” (meaning a license branch, a public assistance agency, an agency primarily serving persons with disabilities, or other such agencies) answers “no” to the question of whether the voter is a U.S. citizen, or will be at least 18 years of age by general election day, then the agency does not continue processing the voter registration application. References to the “county voter registration office” were corrected. (HEA 1360, Secs. 5, 6, 7 and 8; Effective date: March 11, 2004; Citations affected: IC 3-7-14-9; 3-7-15-9; 3-7-16-16; 3-7-18-8)

Bureau of Motor Vehicles; Processing Voter Registration Applications

Several statutes concerning voter registration at license branches were amended to distinguish between the bureau of motor vehicles commission and the Indiana election commission. References to the county voter registration office were corrected.

Beginning in 2006, an electronic version of the voter registration application may be transmitted from the bureau of motor vehicles to the election division, for transmittal to the appropriate county voter registration office. Beginning in 2006, the BMV shall forward the voter registration part of the registration application to the election division for transmittal to the appropriate county voter registration office on an expedited basis (within 48 hours from receipt of the registration) rather than the current 5 day period for the BMV to forward the application to the appropriate county voter registration office. (SEA 72, Secs. 18-26, Effective date: March 16, 2004 for the following: IC 3-7-14-2; 3-7-14-5; 3-7-14-9; 3-7-14-10; 3-7-14-11; 3-7-14-12; 3-7-14-13; 3-7-14-15; Effective date: July 1, 2004 for IC 3-7-14-14)

A voter registration application received by a BMV license branch may be transmitted with an electronic signature of the voter (rather than an original signature in ink or indelible pencil). (SEA 72, Secs. 43 and 44, Effective date: July 1, 2004 [but implemented in 2006]; Citations affected: IC 3-7-32-2; 3-7-32-4)

BMV - Disclosure of Information for Voter Registration Purposes

The bureau of motor vehicles may disclose information concerning driver's license numbers, social security numbers, and other information for voter registration and election purposes. (SEA 72, Sec. 185; Effective date: July 1, 2004; Citation affected: IC 9-14-3-5)

BMV and Residence Standards

The statutes that determine the residence of a voter or a candidate apply to determine the residence of an individual applying for a license from the BMV. This residency standard determination does not prevent the BMV from issuing a license to an individual who is not required to live in Indiana (and is otherwise qualified) to receive the license. (SEA 72, Sec. 186; Effective date: July 1, 2004 but implemented January 1, 2006; Citation affected: IC 9-24-1-1.5)

Voter Registration Information Confidentiality

A reference to National Voter Registration Act (NVRA) provisions concerning confidentiality of voter registration information is corrected since information concerning a registrant's application or declination to register by mail is not confidential under the NVRA and, in addition, HAVA requires that information regarding certain individuals who registered by mail be made available for election administration purposes. (SEA 72, Sec. 42; Effective date: March 16, 2004; Citation affected: IC 3-7-30-2)

Mail-in Voter Registration Deadline

When a voter registration application is mailed to a county voter registration office, but has an illegible or missing postmark, the application must be received by the county not later than the Monday following the close of the registration period to be considered timely filed for the election following receipt of the application. (SEA 72, Sec. 45; Effective date: March 16, 2004; Citation affected: IC 3-7-33-4)

Identification Documentation Must Match Registration Address

Voters who are required to present additional identification documentation must present documentation that shows the current residence address of the voter as the same address provided by the voter on the voter's registration application. (SEA 72, Sec. 46; Effective date: March 16, 2004; Citation affected: IC 3-7-33-4.5)

Military Voters and Late Registration

A military voter who is authorized to register under the late voter registration procedure must submit the required documentation, including a registration application, to the county voter registration office (rather than the circuit court clerk). (SEA 72, Sec. 47; Effective date: March 16, 2004; Citation affected: IC 3-7-36-14)

Special Elections - Resuming Voter Registration

Registration resumes 14 days after a special election, instead of the first of the following month. (SEA 72, Sec. 90; Effective date: March 16, 2004; Citation affected: IC 3-10-8-9)

Voter Registration in School Tax Referenda

A county election board may adopt orders specifying when voter registration begins and ends if a special election on a school property tax levy is conducted during the 60 days before or after a primary election, a general election, or another special election, is conducted. (SEA 72, Sec. 184; Effective date: July 1, 2004; Citation affected: IC 6-1.1-19-4.5)

Voter Information to Discharged Inmates

The department of correction is required to inform discharged inmates of their right to register to vote upon release, and to provide the inmate with a copy of the voter's bill of rights prescribed by the election commission. (HEA 1360, Sec. 19; Effective date: March 16, 2004; Citation affected: IC 11-10-2-4)

CAMPAIGN FINANCE AND CAMPAIGNING

Delinquent Campaign Finance Reports

The deadline for the election division or a county election board to notify a committee that a campaign finance report is delinquent is clarified as no more than 30 days after the deadline for filing the campaign finance report. (SEA 72, Sec. 71; Effective date: March 16, 2004; Citation affected: IC 3-9-4-14)

Committee Treasurers; Prohibitions and Penalties

If a person serves as a committee treasurer in violation of current law by: (1) not being a US citizen; (2) serving as the chairman of a committee (except when a candidate serves as both chairman and treasurer of the candidate's own committee); or (3) is a candidate, and serves as the treasurer of another committee (except when the candidate serves as both chairman and treasurer of the candidate's own committee) then the person is subject to a civil penalty. The civil penalty may be assessed only if approved by the unanimous vote of either the Indiana election commission or a county election board and may be no more than \$500 plus documented investigative costs. (SEA 72, Secs. 72 and 73; Effective date: July 1, 2004; Citations affected: IC 3-9-4-16 and 3-9-4-17)

Municipal Year Campaign Finance Reports

In a city or town in which a municipal primary is authorized by law, but is not conducted due to a lack of opposing candidates, a candidate for city or town office must nonetheless file the pre-primary campaign finance report.

A candidate for a city or town office must also file a pre-election campaign finance report even though no municipal election is held due to a lack of opposing candidates. (SEA 72, Sec. 74; Effective date: July 1, 2004; Citation affected: IC 3-9-5-9)

Deadline for Regular Party Committees to File Statement of Organization

A regular party committee must file a statement of organization (naming the committee's chairman and treasurer, for example), no later than noon 10 days after the committee raises or expends its first \$100. However, this requirement does not apply to the national committee of a political party. (HEA 1360, Sec. 12; Effective date: July 1, 2004; Citation affected: IC 3-9-1-1.5)

VOTING SYSTEMS

Voting System Certification; Use of Uncertified Systems

A proposed improvement or change in a ballot card voting system (punch cards or optical scan ballots) or a computerized direct record electronic voting system (DREs and touch screen systems) may not be marketed, sold, leased, or installed in Indiana before the improvement or change has been approved by the Indiana election commission.

Conforming changes are made in the current law permitting the experimental use of computerized systems by a county. Current law is clarified to reflect that a voting system, not a vendor, is approved by the commission.

If a voting system vendor markets, sells, leases, installs, implements, or permits the use of an uncertified voting system, the Indiana election commission may: (1) revoke the certification previously given to a voting system vendor's product before the certification would normally expire after five years; and (2) prohibit the vendor from marketing, leasing, or selling any voting system in Indiana for a specific period of no more than five years. A vendor subject to these penalties would be permitted to provide support to counties after the vendor certifies that it is only providing support for certified voting systems. (SEA 72, Secs. 108, 109, 110, 111, 112, 113, and 114); Effective date: March 16, 2004; Citations affected: IC 3-11-7-15, 3-11-7-17, 3-11-7-19, 3-11-7.5-5, 3-11-7.5-25, 3-11-7.5-26, 3-11-7.5-28)

Voting System Approval

The marketing of lever voting machines or punch card voting systems is prohibited in Indiana. Voting system approvals granted by the Commission before January 1, 2005 will expire October 1, 2005. (Under current law, voting system certifications expire 5 years from the date of election commission approval). The \$1500 application fee is waived if the system to be recertified in 2005 is unchanged from the previously certified version. (SEA 72, Sec. 200; Effective date: March 16, 2004; Citation affected: noncode provision)

Public Test of Voting Equipment

The county certification indicating the performance of a public test on automatic tabulating equipment for a ballot card voting system must be filed with the election division within 7 days of performing the public test, rather than "immediately." (SEA 72, Sec. 132; Effective date: March 16, 2004; Citation affected: IC 3-11-13-23)

Voting System Certification Application

New requirements are imposed concerning applications for approval of voting systems. A vendor's application to the Indiana election commission must be made under the penalties for perjury. All voting system application requirements must be met before the application may be considered by the commission.

The commission must approve the vendor's voting system approval application before the voting system can be marketed, sold, leased, installed, or implemented in Indiana. If the commission permits a non-emergency change to a current voting system without a new application, the vendor must first certify to the commission that the change has not been marketed, sold, leased, installed, or implemented in Indiana.

A vendor is required (rather than permitted) to apply for reexamination of a voting system if the commission determines that an improvement or change requires reexamination of the voting system. An obsolete reference to an application date and a redundant reference to the escrow of source codes are repealed. (SEA 72, Secs. 133, 134, 135, 136 and 137; Effective dates: March 16, 2004; Citations affected: IC 3-11-15-7, 3-11-15-10, 3-11-15-49, 3-11-15-51 and 3-11-15-57)

CANDIDATES AND OFFICEHOLDERS

Write-in Candidate Deadlines

The deadline to file as a write-in candidate for the general election has been moved from September 20 to July 6. Several other corresponding changes were also made: 1) the deadline to withdraw as a write-in candidate is now July 15; 2) the deadline to file a challenge to a write in candidate is now noon 74 days before election; 3) the deadline for the commission or a county election board to rule on a challenge to a write-in candidate is now noon 67 days before election; and 4) the deadline for election division to certify general election write-in candidates is now August 1. (SEA 72, Secs. 53, 54, 55 and 70; Effective date: March 16, 2004; Citations affected: IC 3-7-2-2.7; 3-8-2-4; 3-8-2-14; 3-8-7-30)

Primary Election Candidate Withdrawal Deadline

The deadline for a primary candidate to withdraw is extended so that a candidate who files a declaration of candidacy for a primary nomination (or for election as convention delegate or precinct committeeman) may withdraw as a candidate up to three days after the deadline for filing the declaration. Under current law, the deadline to file and the deadline to withdraw are the same. (HEA 1360, Sec. 9; Effective date: July 1, 2004; Citation affected: IC 3-8-2-20)

Libertarian Party Nomination Deadline for County Offices

A Libertarian Party nominating convention to choose candidates for county offices must be held no later than noon June 30 (the deadline for a major political party to fill a ballot vacancy by party caucus or county chair appointment). Current law does not specify a deadline for these conventions.

The Libertarian Party must file the certificate listing the nominees of the county convention no later than noon July 3 (the deadline for a major political party to file the certificate filling the ballot vacancy). Current law specifies a July 15 deadline for this filing.

The county election board must rule on any dispute regarding the eligibility of these Libertarian Party candidates by 60 days before the election (the same deadline for ruling on candidate eligibility of major party candidates).

Libertarian Party candidates may withdraw by following the same procedures set forth in the general candidate withdrawal statute (IC 3-8-7-28). (HEA 1360, Sec. 14; Effective date: March 11, 2004; Citation affected: IC 3-10-2-15)

Libertarian Party Nomination Deadline for City and Large Town Offices

A Libertarian Party nominating convention to choose candidates for city and large town offices must be held no later than noon June 30 (the deadline for a major political party to fill a ballot vacancy by party caucus or county chair appointment). Current law does not specify a deadline for these conventions.

The Libertarian Party must file the certificate listing the nominees of the county convention no later than noon July 3 (the deadline for a major political party to file the certificate filling the ballot vacancy). Current law specifies August 28 as the deadline for this filing.

The county election board must rule on any dispute regarding the eligibility of these Libertarian Party candidates by 60 days before the election (the same deadline for ruling on candidate eligibility of major party candidates).

Libertarian Party candidates may withdraw by following the same procedures set forth in the general candidate withdrawal statute (IC 3-8-7-28). (HEA 1360, Sec. 15; Effective date: July 1, 2004; Citation affected: IC 3-10-6-11)

Minor Party and Independent Candidates

The names of minor party candidates for a council district seat within a county, city, or town may appear on the same petition as candidates running for at large offices within the same county, city, or town.

An "independent" candidate cannot request to be placed on the ballot as associated with another candidate (except for the statewide independent tickets referenced in current law).

After 2004, a petition of nomination must state if a candidate is affiliated with the same political party that is or will file another petition of nomination with the county voter registration office.

If a minor party has previously filed a device with the election division, the petition may incorporate this device in the petition by reference, and if the minor party has not done so, or the petition is for an independent candidate, the petition may include the device.

A voter is permitted to file a challenge to a minor party candidate asserting that the candidate is not affiliated with the minor party, or that the name of the minor party as set forth on the candidate's petition would result in voter confusion.

When a minor party or independent candidate for judge or prosecuting attorney is replaced by a successor candidate then the documentation regarding the successor candidate must be filed with the election division since judges and prosecuting attorneys file declarations of candidacy with the election division. (SEA 72, Secs. 62, 63, 64; Effective dates: March 16, 2004; Citations affected: IC 3-8-6-4; 3-8-6-5; 3-8-6-5.5; 3-8-6-17)

Too Many Candidates on Minor Party Petitions

Current law provides that if a nominating petition for a minor party or an independent candidate attempts to nominate too many candidates for the same office (such as two candidates for mayor), then neither candidate name is printed on the ballot.

The same rule now applies to petitions for an office for which more than one candidate may be elected (for example, a petition which nominates 5 candidates for at large town council seats in a town with only 3 at large town council seats). (HEA 1360, Sec. 11; Effective date: March 11, 2004; Citation affected: IC 3-8-7-18)

Clerk of the Supreme Court

The clerk of the supreme court is no longer an elected office. Beginning in 2007, the clerk is to be appointed by the chief justice of the supreme court. The qualifications for a candidate seeking election as clerk of the supreme court are repealed. Beginning in 2006, the clerk serves at the pleasure of the chief justice of the supreme court. Transitional provisions that expire in 2007 provide for filling a vacancy in the office of clerk of the supreme court if the vacancy occurs during the term of the current clerk. (SEA 72, Secs. 3, 52, 56, 79, 98, 178, 179, 181, 182, 183, 188, 189, 190, 191, 195, 198; Effective date: July 1, 2004; Citations affected: IC 3-5-2-48; 3-8-1-11.5; 3-8-1-33; 3-8-4-2; 3-10-2-7; 3-11-2-12; 4-2-1-1; 4-2-2-1; 5-6-1-1; 5-8-3.5-1; 5-14-3-3.5; 33-15-1-1; 33-15-1-7; 33-24-4-1; 33-24-4-7; Noncode)

Filing of Challenge to Candidate Name

A candidate challenge regarding the use of the candidate's name must be filed with the election division (not the Indiana election commission) if the candidate filed a declaration with the election division. (SEA 72, Sec. 8; Effective date: March 16, 2004; Citation affected: IC 3-5-7-7)

General Election Candidate Certifications

The deadline for the election division to certify candidates for the general election ballot occurs after the deadline for the Indiana election commission to resolve candidate challenges (74 days before the general election). (SEA 72, Sec. 67; Effective date: March 16, 2004; Citation affected: IC 3-8-7-16)

Election Division Certification of Presidential Tickets

The election division will certify presidential tickets to the counties by noon of the Thursday that next follows the second Tuesday in September. In some years, the second Thursday of September will occur before the second Tuesday of that month. (SEA 72, Sec. 80; Effective date: July 1, 2004; Citations affected: IC 3-10-4-5)

Small Town Candidate Withdrawals

Specifies that the same candidate withdrawal procedures that apply when a candidate nominated in a primary voluntarily withdrawals or is disqualified apply to candidates nominated in small towns and to write-in candidates, subject to the applicable deadlines for those types of candidates. (SEA 72, Sec. 69; Effective date: March 16, 2004; Citation affected: IC 3-8-7-8)

Minor Party Council Candidates

If more than one minor party candidate is nominated by petition for at large seats on a county, city, or town council, the candidates will be listed on the ballot in alphabetical order by surname. (SEA 72, Sec. 99; Effective date: July 1, 2004; Citation affected: IC 3-11-2-12.7)

Candidate Vacancies

A candidate's written consent (CAN-31 form) to fill a ballot vacancy may be filed with the appropriate office no later than the filing of the certificate that the individual has been chosen as the candidate to fill the vacancy. Since a candidate in a party caucus to fill a ballot vacancy is required by current law to file the consent prior to the caucus, this eliminates the redundant filing of a second consent after the caucus. (SEA 72, Sec. 168; Effective date: March 16, 2004; Citation affected: IC 3-13-1-14)

Office Vacancies in Certain Special Service Districts

In a few special service districts (such as water conservation) in Indiana, board members are elected by the voters on a nonpartisan basis. Current law did not provide a method to fill vacancies in these elected offices, since the usual political party caucus method would not apply. Now the remaining members of the board will fill the vacancy, and if no members remain, the vacancy is filled by the county executive (the county commissioners or Mayor of Indianapolis) of the county in which most of the population of the district is located. (SEA 72, Sec. 169; Effective date: March 16, 2004; Citations affected: IC 3-13-7-2.5)

Office Vacancies in Township Offices

Where the person vacating a township office was elected or selected by a major political party, the party has 30 days to fill the vacancy. If the party fails to fill the vacancy within 30 days, the county commissioners fill the vacancy. This is similar to the procedures that apply to vacancies on a town council, that is, for major party vacancies the party has 30 days to fill the vacancy and, if the party fails to fill the vacancy within 30 days, the remaining members of the town council fill the vacancy. (SEA 72, Secs. 170 and 171; Effective date: July 1, 2004; Citations affected: IC 3-13-10-2 and 3-13-10-2)

Temporarily Filling Office Vacancies

The chief deputy in certain *circuit* offices (clerk or prosecuting attorney), and the chief deputy in any township office, may now temporarily assume the duties of the office if the office becomes vacant until a party caucus or a county chairman fills the vacancy as provided by law. Current law already permits the chief deputy to temporarily assume the duties when a vacancy occurs in a county, city or town office.

If a chief deputy does not exist in the circuit office, or the chief deputy cannot serve, the county commissioners appoint a person to temporarily assume the duties of the circuit office. When a vacancy occurs in a circuit office that contains more than one county, the county commissioners of the counties meet in joint session to fill the vacancy temporarily.

If a chief deputy does not exist in a township office such as trustee or constable, or the chief deputy cannot serve, the chairman of the township board temporarily assumes the duties of the office until the party caucus or chair can fill the vacancy as provided by law. (SEA 72, Secs. 172, 173, 174 and 175; Effective date: March 16, 2004; Citations affected: IC 3-13-11-12; 3-13-11-13; 3-13-11-16 and 3-13-11-17)

Duplicate Filings of Financial Disclosure Statement by Current State Officeholder

If an individual who holds a state office has already filed a financial disclosure statement covering the previous calendar year, the individual is not required to file another statement with the state ethics commission covering the same period if the individual becomes a candidate for election or reelection to a state office during the same year. (SEA 72, Sec. 180; Effective date: March 16, 2004; Citation affected: IC 4-2-6-8)

County Commissioner Resignation Procedure

A county commissioner who wishes to resign is not required to submit a resignation to the president of a county council. A county commissioner who wishes to resign must file a written resignation with the circuit court clerk (like all other local officials). (SEA 72, Sec. 192; Effective date: July 1, 2004, Citations affected: IC 3-13-7-2.5)

County Office Deputies and Oaths

An individual who serves as deputy in a county office is not required to take an oath of office unless the deputy is temporarily filling the duties of the office during a vacancy. This resolves a conflict in current law. (SEA 72, Sec. 193; Effective date: March 16, 2004; Citations affected: IC 36-2-16-2)

County Election Board Members

Beginning January 1, 2005, a "member of a candidate's committee" is prohibited from being appointed, or serving, as a member of a county election board (or that member's proxy or alternate proxy). Conforming changes are made in the laws governing the Lake County and Tippecanoe county combined boards of election and registration. (HEA 1360, Secs. 2, 3 and 4; Effective date: July 1, 2004; Citations affected: IC 3-6-5-3; 3-6-5.2-4.5; 3-6-5.4-4)

Current law does not specify who serves as a member of a candidate's committee. However, the Indiana Court of Appeals ruled in the *Genesis Convention Center* case that the chairman and the treasurer of a committee were members of the committee by operation of law.

Officeholder Leave of Absence for "Active Duty" in the Military

Officeholders who are called to active duty in the military may take a leave of absence. A person who holds a state, legislative, local, or school board office who is called into active duty in the armed forces of the United States or the national guard and who may not appoint a deputy under IC 5-6-2 may take a leave of absence during their active duty without vacating the person's office.

To take a leave of absence, the person must give written notice that they are taking a leave of absence with the same person or entity, and in the same manner, that the person would file a resignation. The written notice must state that the person is taking a leave of absence because they have been called to active duty, identify the service that the person is serving in, and state that the person will be temporarily unable to perform the duties of their office.

When a person takes a leave of absence, the vacancy in the office is filled during the person's leave of absence. The vacancy is filled, for the most part, like permanent office vacancies are filled. For example, vacancies due to leaves of absences in county offices will be filled by reference to the procedures set forth in IC 3-13-7 and IC 3-13-11 for filling office vacancies. With respect to a justice of the supreme court, a judge of the court of appeals, or a judge of the tax court, or a judge of a circuit, city, county, probate, or superior court, the supreme court shall appoint a judge pro tempore to fill the officeholder's office in accordance with the court's rules and procedures.

A leave of absence begins on the date that the officeholder enters active duty and ends on the earliest of (1) the date of the officeholder's death; (2) the thirtieth day after the date of the discharge or release of the officeholder from active duty; or (3) the date the officeholder provides the written notice that the officeholder's leave of absence has ended to the person or entity to which the officeholder provided his leave of absence notice.

The person or entity that receives this written notice shall, not later than seventy-two (72) hours after receipt of the officeholder's notice, give written notice that the officeholder's leave of absence has ended to the (1) person temporarily appointed to the officeholder's office; and (2) any person or entity that received the written notice of the leave of absence.

The person selected to fill the vacancy due to the leave of absence 1) assumes all the rights and duties of the office; 2) is entitled to the compensation for the office; and 3) serves until the earlier of the date the officeholder's leave of absence ends or expiration of the officeholder's term of office.

On the date an officeholder's leave of absence ends, the officeholder resumes the duties of the officeholder's office for the remainder of the term for which the officeholder was elected. If the officeholder's term of office expires during the officeholder's leave of absence, the office is filled as otherwise required by law.

Except as otherwise provided by a federal law or regulation, an officeholder who is on a leave of absence is entitled to become a candidate for, and be elected to, the office from which the officeholder has taken a leave of absence. (HEA 1345, Secs. 1 and 2; Effective date: March 17, 2004; Citation affected: IC 5-9-4 [new])

BALLOT REQUIREMENTS AND DESIGN

Write-ins and Ballots

Ballots (regular paper and ballot card ballots, absentee ballots and provisional ballots) are not required to include a space for write-ins unless there are declared write-in candidates. This does not apply to federal offices so a method to cast a write-in vote for a federal office must still be provided whether or not a candidate has filed a declaration for federal office. (SEA 72, Secs. 103, 104, 131, 149, and 150; Effective dates: March 16, 2004 and July 1, 2004; Citations affected: IC 3-11-4-12, 3-11-4-14, 3-11-13-18, 3-11.7-1-5 and 3-11.7-1-6)

Write-ins and Lever Machines

A precinct using a lever machine is not required to provide a paper ballot for write-ins unless there are declared write-in candidates. This does not apply to federal offices so a method to cast a write-in vote for a federal office must still be provided whether or not a candidate has filed a declaration for federal office. (SEA 72, Sec. 106; Effective Date: March 16, 2004; Citation affected: IC 3-11-5-10)

Traditional Paper Ballots Printed By State

Beginning with the 2006 general elections, county election boards will print all ballots containing the names of all candidates. The Indiana Election Division will no longer print traditional paper ballots for the general election containing statewide candidates and public questions for use by counties which request these traditional paper ballots. The requirement that the election division print these traditional paper ballots is repealed effective December 1, 2004. (SEA 72, Secs. 93, 94, 196 and 203; Effective date: July 1, 2004 and December 1, 2004 [repealers]; Citations affected: IC 3-11-2-2, 3-11-2-2.1, 3-11-2-1[repealed], and 3-11.7-1-5[repealed])

Uncontested Candidates for Convention Delegate and Precinct Committeeman

In a primary election the names of unopposed candidates for convention delegate and precinct committeeman are not printed on the primary election ballot unless the party files a written notice with the county election board no later than noon seven (7) days after the deadline for filing declarations of candidacy. This statute resolves a conflict in existing statute to clarify that the appointed member of the county election board affiliated with the party filing the notice (rather than the county chairman) is the individual who must file this notice. (HEA 1360, Sec. 13; Effective date: March 11, 2004; Citation affected: IC 3-10-1-5)

Ballot Specifications: Independent Tickets and Write-ins

References to “independent ticket” refers only to independent candidates running together for President and Vice-President of the United States, or for governor and lieutenant governor.

A paper ballot is not required to include a space for write-ins unless there are declared write-in candidates. (SEA 72, Secs. 95, 96 and 99; Effective date: March 16, 2004; Citations affected: IC 3-11-2-6; 3-11-2-9; 3-11-2-10)

Voter Education Programs and Overvotes

References were corrected to indicate that the voter education program required beginning in 2006 under HAVA for counties who use paper ballot or optical scan ballot cards must notify voters of the effect of casting “multiple votes” for a single office rather than “multiple ballots” for a single office. (SEA 72, Secs. 123 and 129; Effective date: March 16, 2004; Citations affected: IC 3-11-10-24.5 and 3-11-11-1.2)

Printing Provisional Ballots in a Presidential Year

The deadline for printing and delivery of provisional ballots in a presidential election year now conform to the 38-day deadline in current law for printing regular official ballots in presidential election years. A reference was added to the provisional ballot laws regarding the clerk’s authorized deputy receiving printed provisional ballots. (SEA 72, Secs. 149 and 150; Effective date: July 1, 2004; Citations affected: IC 3-11.7-1-5 and 3-11.7-1-6)

Ballot Layout-Metropolitan School District Elections

If: (1) a vacancy occurs on the school board in an at-large seat; (2) more than 2 years remain in that term; and (3) more than one at-large seat would be on the ballot at the next election; then the ballot must distinguish between the candidates for at-large seats, and the candidates for district seats. The candidate for an at-large seat who is elected, but receives the lowest number of votes, fills the at-large seat with 2 years remaining in the term (with the at-large candidate receiving the most votes being elected to a full 4 year term). (SEA 72, Sec. 187; Effective date: March 16, 2004; Citation affected: IC 20-4-8-18)

PUBLIC QUESTIONS AND REFERENDA

Statewide Public Questions

The text of the ballot questions that will appear statewide on the general election ballot in 2004 will be as follows:

"PUBLIC QUESTION #1

Shall Article 10, Section 1 of the Constitution of the State of Indiana be amended to allow the General Assembly to make certain property exempt from property taxes, including (1) a homeowner's primary residence; (2) personal property used to produce income; and (3) inventory?"

"PUBLIC QUESTION #2

Shall Article 6, Section 2 of the Constitution of the State of Indiana be amended to allow the General Assembly to establish a uniform date for the beginning of the terms of the county offices of clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner, and surveyor?"

"PUBLIC QUESTION #3

Shall Article 5, Section 10 of the Constitution of the State of Indiana be amended to specify: (1) which state official acts as governor when the office of governor and the office of lieutenant governor are both vacant; and (2) the deadline for the General Assembly to meet when either the House or the Senate cannot assemble a quorum within forty-eight (48) hours after both offices become vacant?"

(SEA 36, Secs. 1, 2, 3 and 4; Effective date: March 16, 2004 [for statute prescribing ballot language]; Citations affected: Indiana Constitution [if a proposed amendment is ratified by the voters])

School Tax Referenda

If a school property tax levy referendum is defeated then a special election on the referendum may not be held before the earlier of: 1) 11 months after the date of the election on the original referendum election; or 2) one year after the date of the election on the original referendum. This provision expires June 30, 2006. (SEA 72, Sec. 197; Effective date: July 1, 2004; Citation affected: noncode)

VOTING QUALIFICATIONS AND PROCEDURES

Inactive Voters Must Affirm Address at the Polls

If a voter's registration is classified as "inactive" because the voter did not respond to a federal NVRA mailing to the voter, the voter must affirm that the voter currently resides at the address on the inactive voter registration before the voter proceeds to vote. (SEA 72, Secs. 48 and 50; Effective date: March 16, 2004; Citations affected: IC 3-7-38.1-7; 3-7-38.2-13)

Poll List to Allow Voter to Mark "Address Unchanged" Beginning in 2006

After December 31, 2005, each line on a poll list sheet provided to take a voter's current residence address must include a box under the heading "Address Unchanged" so that a voter whose residence address shown on the poll list is the voter's current residence address may check the box instead of writing the voter's current residence address on the poll list. (SEA 86, Secs. 1-5, Effective date: July 1, 2004; Citations affected: IC 3-10-1-24; 3-11-3-18, 3-11-8-25.1; 3-11-8-25.5; and 3-11-8-26.1)

Voter Who Produces Agency Receipt Must Complete Registration Application

If a person appears at the polls with a receipt from a full service voter registration agency documenting that the person applied to register during the open registration period and the county voter registration office has no record of the transaction, the person must not only present the receipt but must also first complete a voter registration application at the polls prior to voting. Voter registration applications must be supplied to precinct election workers for this purpose. Precinct workers are required to attach the completed registration application to the poll list and return any applications to the county voter registration office. (SEA 72, Sec. 51; Effective date: July 1, 2004; Citations affected: IC 3-7-48-7)

Eligibility to Participate in Small Town Party Convention

A voter who wishes to participate in a small town major party nominating convention must: (1) meet the party affiliation requirements to participate in the convention, *as adopted by the rules of the political party*, and (2) sign a statement under the penalties for perjury that the voter is affiliated with that political party.

The voter must also be a current resident of the town, and a registered voter of the town no later than the date required under party rules.

(Under former law, to be eligible to participate in a small town party convention, the voter must have cast a vote for a majority of that party's candidates at the last general election, or intend to vote for a majority of the party's candidates at the next general [not municipal] election.) (HEA 1360, Sec. 10; Effective date: July 1, 2004; Citations affected: IC 3-8-5-11)

Convention and Caucus Election Records

The ballots, poll lists, and other documents used by a party nominating convention, or a party caucus to fill a candidate vacancy are the property of the political party, and shall be retained and preserved as specified by the party's rules. (HEA 1360, Sec. 1; Effective date: March 11, 2004; Citation affected: IC 3-5-4-10)

Public Access to Sealed Post-Election Records

For election materials used for elections held after December 31, 2003 after the expiration of the deadline for filing a recount or contest petition, election material (other than ballots) shall be made available for public inspection and copying under the Public Records Law (IC 5-14-3). If a recount or contest petition is filed, the election material remains confidential until the completion of the recount or contest.

However, if the county voter registration office determines that inspection and copying of this election material would reveal how an individual cast a ballot, the part of the election material necessary to protect the secrecy of the ballot remains confidential. The former statute regarding election material was made applicable only to election material for elections held before January 1, 2004. Conforming cross-references to statutes governing election material for elections held before 2004 (and beginning in 2004) were made in other statutes. (SEA 72, Secs. 68, 77, 78, 88, 119, 130, 143-148, and 154-159; Effective date: March 16, 2004; Citations affected: IC 3-10-1-31; 3-10-1-31.1; 3-8-7-24; 3-10-7-33; 3-11-8-30; 3-11-11-18; 3-11.5-5-23; 3-11.5-5-25; 3-11.5-5-26; 3-11.5-6-26; 3-11.5-6-28; 3-11.5-6-29; 3-11.7-5-24; 3-11.7-5-26; 3-11.7-5-27; 3-12-2-12; 3-12-3-10; 3-12-4-13)

Extended Deadline for Absentee Ballot Application Fax by Military or Overseas Voter

The deadline for a county election board to receive a faxed absentee ballot application from a military or overseas voter who is entitled to return a voted ballot by fax is extended from midnight 8 days before election day to noon on the Monday before election day. (Since the ballot itself can be faxed to and faxed back by this group of voters, there is no need to receive the application itself at least 8 days before the election.) (SEA 72, Sec. 102; Effective date: March 16, 2004; Citation affected: IC 3-11-4-3)

Late Registration and Absentee Voting for Military Voters

A reference to the Lake County board of elections and registration is corrected. If a military voter permitted under current law to register after the close of registration and vote by absentee ballot in the clerk's office wishes to cast the absentee ballot after the usual close of in-office absentee voting at noon on the day before election day, the county election board may adopt a resolution to permit the voter to cast the absentee ballot at a location designated in the resolution. (Many county courthouses are closed on election day itself, and so another location is necessary.) (SEA 72, Sec. 124; Effective date: March 16, 2004; Citation affected: IC 3-11-10-26)

Annexations and Voter Eligibility in Elections

If an annexation to a city or town takes effect less than 30 days before a primary or election, the voters in the annexed territory are entitled to vote in the municipal primary or election, even if precinct lines may not have been changed to follow the annexation. (Under a 2002 amendment, precinct lines are no longer required to follow city limit lines.) (SEA 72, Sec. 92; Effective date: March 16, 2004; Citation affected: IC 3-11-1.5-33)

Requesting Update to Voter ID

Poll workers must ask a voter to "update" the voter's voter identification number. (SEA 72, Sec. 118; Effective date: July 1, 2004; Citation affected: IC 3-11-8-26)

Identification Documentation Requirements

Beginning in 2006 when the statewide voter registration system is implemented, the current law expires which sets forth the requirements that apply to certain voters who offer to vote at the polls, but had registered to vote for the first time in a county by mail. That law is replaced by a statute that describes the procedures applicable to voters who offer to vote at the polls and are subject to the additional documentation requirement because the voter registered to vote for the first time *in Indiana* by mail. (SEA 72, Sec. 117, Effective date: July 1, 2004, Citation affected: IC 3-11-8-25.2)

ABSENTEE BALLOT VOTING PROCEDURES

Deadline for Mailing Absentee Ballots

If an absentee ballot application has been received before the ballots are printed, the absentee ballot must be mailed not more than 5 days after the latest deadline for delivering the printed ballots to the circuit court clerk that applies to that election. The deadline for delivering these ballots now varies depending on whether or not the election is a presidential election year. (SEA 72, Sec. 105, Effective date: July 1, 2004; Citations affected: IC 3-11-4-18)

Deadline for Certain Voters Casting Absentee Ballots to Provide Documentation

If a voter was a “first-time mail-in” voter who: (1) was required to present additional documentation when registering; (2) has cast an absentee ballot; and (3) has not presented the documents to the county voter registration office by noon on election day, the absentee ballot can still be counted if the voter files the documentation with the county voter registration office before the polls close at 6 p.m. This deadline would be consistent with the deadline for this type of voter who voted in person, rather than by absentee.

A reference to the HAVA required voted education program for overvoting is corrected to refer to casting “multiple votes” (rather than “multiple ballots”) for an office. (SEA 72, Sec. 105; Effective date: July 1, 2004; Citation affected: IC 3-11-4-18)

Absentee Voter Boards Providing Assistance to Voter

An error in current law is corrected by striking a reference to the “absentee voter board” to clarify that the Affidavit of Voter Assistance (PRE-3) does not have to be signed by the two (2) members of the absentee voter board who assist a voter with disabilities or a voter who is unable to read or write English. (SEA 72, Sec. 120; Effective date: March 16, 2004; Citation affected: IC 3-11-9-2)

Marking Absentee Voter in Pollbook

After a precinct election board processes an absentee ballot and the judges enter the voter’s name on the poll list, the judges must also mark the poll list to record that the voter has voted by absentee ballot. (SEA 72, Sec. 121; Effective date: March 16, 2004; Citation affected: IC 3-11-10-16)

Challenge of Absentee Ballot - Conversion to Provisional Ballot

If an absentee ballot is challenged at a precinct due to the voter not being a legal voter of the precinct, the challenge is determined by the county election board under the provisional ballot procedure (rather than by the precinct election board). (SEA 72, Secs. 122 and 140; Effective date: March 16, 2004; Citations affected: IC 3-11-10-21 and 3-11.5-4-15)

Voting Absentee on Electronic Voting System in Clerk’s Office

A county election board may provide for absentee voting on an electronic voting system in the clerk’s office only if the county has also adopted the procedure for the central count of absentee ballots. This type of absentee voting can be conducted in the office of the board of elections and registration (not just the clerk’s office). The resolution to adopt this absentee voting procedure must require: (1) comparison of signatures on the absentee application and the applicant’s voter registration; and (2) ensure the invalid ballots (from voters deceased by election day, for example), not be counted. (SEA 72, Sec. 125; Effective date: March 16, 2004; Citation affected: IC 3-11-10-26.2)

Absentee Ballots and Identification Documentation

If a “first time mail in” voter required to present documents as part of the voter registration process has not done so, and has since cast an absentee ballot, then the inspector is required to check both the precinct poll list and any later certification from the county election board to determine whether the voter has met this documentation requirement yet or not. If the voter has met the documentation requirement, then the absentee ballot is processed as usual. If not, then the voter’s ballot is processed as a provisional ballot. Current law only refers to the provisional ballot procedure. (SEA 72, Sec. 126; Effective date: March 16, 2004; Citation affected: IC 3-11-10-28)

Membership on Absentee Voter Board

An individual may serve as an absentee voter board member even if the board member is related to a candidate if the candidate is not running for an office on the ballot everywhere in the county, and if the county election board restricts the person's duties to prevent influencing any absentee ballots cast within the election district.

If a county chairman fails to nominate individuals to serve as absentee voter board members (or absentee voter board central count members, counters, and couriers in a central count county) the county election board may appoint voters of the county to serve if the voters otherwise meet the requirements for serving on the absentee voter board. (SEA 72, Secs. 127, 128, 141 and 142; Effective date: March 16, 2004; Citations affected: IC 3-11-10-36, 3-10-11-37, 3-11.5-4-22, and 3-11.5-4-23)

Central Count Procedures for Absentee Ballots

The standards used by a precinct inspector to determine whether to accept an absentee ballot at the polls (IC 3-11-10-17) are also the standards to be used by absentee ballot counters in a county which has adopted the procedure for central count for absentee ballots. (SEA 72, Sec. 139; Effective date: March 16, 2004; Citations affected: IC 3-11.5-4-13)

Approval of Revised Absentee Ballot Application

Extends from July 1, 2003 to December 31, 2003 the deadline for the Indiana election commission to approve a revised absentee ballot application form that references the additional documentation required to be presented by certain voters. (The commission approved the revised application form on December 9, 2003). (SEA 72, Sec. 199; Effective date: retroactive May 7, 2003; Citation affected: noncode provision)

PROVISIONAL BALLOT VOTING PROCEDURES

Provisional Ballot Counter Qualifications

The qualifications to serve as a central count absentee ballot counter are the same as the qualifications to serve as a provisional ballot counter. (SEA 72, Secs. 151 and 152; Effective date: March 16, 2004; Citations affected: IC 3-11.7-3-2 and 3-11.7-3-5)

Deadline to Perform Provisional Ballot Count

A county election board must determine whether to count provisional ballots no later than noon on Monday following election day, even if that Monday happens to fall on the Veterans Day holiday, which would ordinarily transfer the deadline to the following Tuesday. If the deadline were transferred to Tuesday, that would impact the deadline for candidates to file a recount or contest, which also falls on that day. (SEA 72, Secs. 153; Effective date: July 1, 2004; Citations affected: IC 3-11.7-5-1)

POLLING PLACES AND POLL WORKERS

Change in Definition of “Chute” at Polling Place

The property line “nearest to the entrance to the polls” is to be used in measuring the chute when the usual 50 feet chute cannot be used. That is, if the property line nearest to the entrance to the polls is less than 50 feet, then the chute measures one-half of the distance from the entrance to the polls to the property line nearest to the entrance to the polls. A reference to stationing of poll worker in the polls by the inspector is removed since this stationing is not required by other election law provisions, and can give rise to ambiguity in whether a criminal statute has been violated. (SEA 72, Sec. 1; Effective date: March 16, 2004; Citation affected: IC 3-5-2-10)

Unauthorized Presence in Polling Places or Chutes and Prohibition on Electioneering

The current law prohibiting unauthorized presence within the polls or chute is reconciled with the amended definition of “chute.” A conforming change was made to the current law concerning electioneering since the chute is no longer always 50 feet from the entrance to the polls. The prohibition in current law against electioneering within the area in the clerk’s office used for absentee ballot voting also applies to satellite offices of the circuit court clerk. (SEA 72, Secs. 176 and 177; Effective date: March 16, 2004; Citations affected: IC 3-14-3-15 and 3-14-3-16)

Precinct Election Worker Qualifications

An individual is disqualified from serving as a poll worker if the person is a candidate for the election in that precinct. Otherwise, a person may serve as a poll worker in a precinct where the person is not a candidate on the ballot even if the person is on the ballot as a candidate elsewhere in the county or state. The relative of an unopposed candidate within a party at a primary can serve as a poll worker even if the opposing party has candidates in its primary for the same office. A reference was added to the 2003 requirement that certain poll workers can only serve if they attend required poll worker training offered by the county election board. (SEA 72, Sec. 9; Effective date: March 16, 2004; Citation affected: IC 3-6-6-7)

Precinct Worker Vacancies

Permits a county election board to fill a vacant precinct worker position by majority (rather than unanimous) vote of the county election board if the political parties have failed to nominate a precinct worker by the 14 day deadline. (SEA 72, Sec. 10; Effective date: March 16, 2004; Citation affected: IC 3-6-6-13)

Precinct Election Worker Oaths

The oath signed by precinct election workers is revised to clarify that a person cannot serve as a precinct election worker if the person is a candidate to be voted for “in this precinct”, or is related to a candidate to be voted for “in this precinct.” A statement is added to the oath that the precinct election worker received any training required by state law. (SEA 72, Sec. 11; Effective date: March 16, 2004; Citation affected: IC 3-6-6-23)

Precinct Election Worker Training Requirements

The requirement for a county election board to require precinct judges to attend the training provided by the county election board is repealed. The county election board shall require inspectors to attend the training and may require other poll workers precinct election officers to attend the training. A county election board may allow an individual to serve as a poll worker after completing emergency training in the manner prescribed by the county election board if a poll worker was required by state law (or by a county election board) to attend training but the poll worker was either appointed after the training session scheduled by the county election board or was unable to attend training due to good cause. (SEA 72, Sec. 13; Effective date: March 16, 2004; Citation affected: IC 3-6-6-40)

Primary Candidate Watchers in Municipal Elections

A group of candidates at a primary election may appoint their own watchers at a polling place if 26% of all primary candidates within the same party *within the same city or town* sign a request for watchers in a municipal primary and that these watchers have the same rights and duties as a watcher appointed by a political party. (SEA 72, Sec. 14; Effective date and Citations affected: IC 3-6-9-1 [effective July 1, 2004]; IC 3-6-9-13 [effective March 16, 2004])

Media Watcher Rights and Duties

A media watcher has the same rights and duties as a watcher appointed by a political party, except that a media watcher does not have the right to call upon election sheriffs to make arrests. (SEA 72, Sec. 16, Effective date: March 16, 2004; Citation affected: IC 3-6-10-5.5)

Special Elections - Combining Precincts

If a nonpartisan special election is held (a local public question, for example), and the county election board adopts a resolution under current law to have precincts served by only one judge, poll clerk, and sheriff, then the county election board may adopt a resolution to provide that more than one precinct in the special election can be served by the same precinct election board. (SEA 72, Sec. 89; Effective date: March 16, 2004; Citation affected: IC 3-10-8-6)

Polling Place Accessibility Standards

A reference in the current law to former polling place accessibility standards is corrected and a reference to the county voter registration office is corrected. (SEA 72, Sec. 91; Effective date: March 16, 2004; Citation affected: IC 3-11-1.5-15)

Precinct Election Boards and Multiple Precincts

A county election board by unanimous vote of its entire membership may authorize the county executive to locate the polls for one precinct at the polls for an adjoining precinct, with the same precinct election board administering both precincts. (Currently this procedure is restricted to precincts with less than 250 active voters). The county election board's order expires at the end of the election year. (SEA 72, Sec. 115; Effective date: March 16, 2004; Citation affected: IC 3-11-8-4.3)

Individuals Authorized to be Present in Polling Place

A county election board member acting on behalf of the board, or mechanic authorized to act on behalf of the entire county election board, may enter the polls to perform their duties. An individual authorized by current state law to assist a disabled voter or a voter who cannot read English may be present in the polls for that purpose. (SEA 72, Sec. 116; Effective date: March 16, 2004; Citation affected: IC 3-11-8-15)

Poll Clerks and Voter Lists

A poll clerk may keep a list of voters who have signed the poll list, and to make this list available to political party watchers or pollbook holders. A poll clerk may not delay voters in casting votes, or engage in electioneering, while keeping the list. (HEA 1360, Sec. 18; Effective date: March 11, 2004; Citation affected: IC 3-11-8-10.5)

TIE VOTES, RECOUNTS AND CONTESTS

Breaking Tie Votes for Local Offices

When a tie vote occurs in local office (other than a circuit office), the local fiscal body breaks the tie by electing a person to fill the office. The local fiscal body must break the tie no later than December 31, before the new term for the office would begin. (Under former law, the local fiscal body broke the tie during the new term in January.) If a tie vote has occurred for more than one at large seat, the fiscal body breaks the tie by electing the number of persons needed to fill each at large seat. (SEA 72, Sec. 162; Effective date: July 1, 2004; Citation affected: IC 3-12-9-4)

Recount Bond for Local Recount

The 1% margin to determine the minimum amount of a recount bond required in a local recount is based on the total votes cast for all candidates for the nomination or office. (SEA 72, Sec. 160; Effective date: March 16, 2004; Citation affected: IC 3-12-6-10)

Local Contest Remedies

A court may order a special election as a remedy in a local contest if the court finds that "a deliberate act or series of actions occurred" that make it impossible to determine which candidate received the most votes. Former law permitted a contest to be based on these allegations but did not specify a remedy in statute when the allegations were proven. (SEA 72, Sec. 161; Effective date: March 16, 2004; Citation affected: IC 3-12-8-17)

Jurisdiction of State Recount Commission

The state recount commission shall conduct election contest proceedings concerning elections for federal or state legislative offices. (SEA 72, Sec. 163; Effective date: March 16, 2004; Citations affected: IC 3-12-10-4)

State Recount Commission Costs

The state recount commission is not required to pay for costs incurred by a party to the recount in producing or copying documents, or in having witnesses appear before the commission. (SEA 72, Sec. 164; Effective date: March 16, 2004; Citations affected: IC 3-12-10-12)

State Level Contest Remedies

A court may order a special election as a remedy in a contest before the state recount commission if the commission finds that: (1) a mistake was made in the programming of a voting machine or electronic voting system; (2) a voting machine or electronic voting system malfunctioned; or (3) a deliberate act or series of actions occurred that make it impossible to determine which candidate received the most votes. Former law permitted a contest to be based on these allegations but did not specify a remedy in statute when the allegations were proven. (SEA 72, Sec. 166; Effective date: March 16, 2004; Citation affected: IC 3-12-11-18)

Contest Deadline for Presidential Electors

The state must resolve any contest regarding its presidential electors not later than six (6) days before the time fixed by federal law for the meeting of electors. (SEA 72, Sec. 167; Effective date: July 1, 2004; Citations affected: IC 3-12-11-19.5)

CITY AND TOWN ELECTIONS

Municipal Election Expenses

A county auditor must certify municipal election costs to a city or town clerk-treasurer not later than 30 days after the municipal primary or municipal election for which the costs were incurred. The city or town council must reimburse the county for municipal election expenses by the end of the municipal election year.

The usual apportionment of election costs between a county and the cities and towns does not apply to a town that enters into an agreement with the county to pay a specific amount for the county to conduct the election. An apportionment of municipal primary expenses is to be made among those cities and towns which conducted a primary, and an apportionment of municipal election expenses is to be made among those cities and towns which conducted the November municipal election. (The current law does not recognize that some municipalities may conduct a primary, but not a municipal election, or vice versa.) The current form used to itemize these election costs may be prescribed by the election commission (rather than the state board of accounts). (SEA 72, Secs. 4, 5, 6 & 7; Effective date: July 1, 2004; Citations affected: IC 3-5-3-7; 3-5-3-8; 3-5-3-9; 3-5-3-10)

Small Town Election Procedures

Certain statutes apply to small towns under 3,500 that adopt an ordinance to conduct a primary.

The circuit court clerk is not required to certify a list of municipal election candidates to the town clerk-treasurer if the county (rather than the town) will be conducting the town election.

The chairman and secretary of a major party small town convention are not required to certify the party's device for placement on the municipal election ballot (the major party's device filed with the election division is to be used on all ballots throughout the state that contain the party's candidates.)

A county election board shall provide a camera-ready copy of a party's ballot device to a town election board at the request of the town election board. If a party does not file a device with a county election board for all ballots to be prepared by a county or town election board, a town election board is not required to use any device for those candidates on the ballot.

The deadline to file a contest to a write-in candidate in a small town election is noon 7 days following the August 28 deadline for a major party to certify its selection of candidates at a town convention.

The deadline for determining a challenge regarding a small town write-in candidate is noon 7 days before the election.

A cross-reference in a statute regarding preservation of post-election records is corrected to refer the general statutes regarding public access to sealed post-election records. (SEA 72, Secs. 57, 58, 59, and 60; Effective date: July 1, 2004; Citations affected: IC 3-8-5-2; 3-8-5-10.5; 3-8-5-13; 3-8-6-14.7) (SEA 72, Secs. 61 and 66; Effective date: March 16, 2004; Citations affected: IC 3-8-5-15; 3-8-7-11)

Uncontested Municipal Elections

The current law prohibiting uncontested city, large town and small town elections also applies when the uncontested candidate is a write-in candidate. (SEA 72, Secs. 82 and 86; Effective date: July 1, 2004; Citations affected: IC 3-10-6-7.5; 3-10-7-7)

Rights of Voters in Municipal Elections

Voters in a city, large town and small town elections have the same rights and responsibilities as voters in a general election year, except where the city or town election law specifies otherwise. (SEA 72, Secs. 83 and 87; Effective date: July 1, 2004; Citations affected: IC 3-10-6-8; 3-10-7-21)

Role of County Election Boards and Town Election Boards in Municipal Election

The county election board conducts a municipal election in all small towns (instead of only in a small town under 500 in population) unless the town council adopts a resolution to establish a town election board to conduct the town election.

The time for the town council to adopt a resolution to establish a town election board is extended from April 1 until August 8 of the town election year (which would follow the August 1 deadline for a candidate to file for nomination at a major party small town convention).

The deadline for the town to file a copy of this resolution with the county circuit court clerk is extended from before May 1 to not later than noon August 21. (SEA 72, Sec. 85; Effective date: July 1, 2004; Citations affected: IC 3-10-7-5.5)

Small Town Contract With County Election Board

A small town may enter into an agreement with a county to conduct the town's municipal primary as well as the municipal election in a municipal election year. The deadline for entering into the agreement was extended from July 1 to no later than September 21 in the municipal election year. (SEA 72, Sec. 84; Effective date: July 1, 2004; Citations affected: IC 3-10-7-4)

School Board Elections in Municipal Election Years

An obsolete reference to school board elections conducted in municipal election years was repealed. (Currently there appear to be no such elections conducted in municipal years, and any that would be so conducted would be provided in the IC 20 school organization plans or special statutes.) (SEA 72, Sec. 81; Effective date: July 1, 2004; Citations affected: IC 3-10-6-5)

Municipal Officials and Oaths

If an individual who was elected to a city or town office in November 2003 failed to deposit the individual's oath with the county circuit court clerk by February 2, 2004 as required by law, but the individual does deposit the oath by March 1, 2004, then the deposit of the oath is ratified, and the individual is not removed from office for failing to meet the filing deadline. (SEA 72, Sec. 202; Effective date: retroactive January 1, 2004; Citations affected: noncode)

Small Town Election Schedule

A small town, not located in Marion County, may adopt an ordinance setting forth a schedule for electing some or all town elected officials. This ordinance may not provide for elections in the "off-year" of the election cycle when elections are not generally held (2005, for example). (HEA 1360, Sec. 116 and 117; Effective date: July 1, 2004; Citations affected: IC 3-10-7-2.9 and 3-10-7-3)

STATE ELECTION ADMINISTRATION

Administering and Amending the HAVA State Plan

The secretary of state, with the consent of the election division co-directors, may administer the election administration assistance fund in accordance with the 2003 HAVA State Plan. The State Plan can be amended in accordance with federal law and the procedures for amendment set forth in the Plan. The Plan may be administered in accordance with any amendment to the Plan. (SEA 72, Sec. 107; Effective date: March 16, 2004; Citation affected: IC 3-11-6.5-2.1)

Federal HAVA Deadlines

The filing of the governor's notice before May 1, 2003 (rather than April 7, 2003) regarding Indiana's use of Section 101 and Section 102 HAVA payments is ratified. The deadline is extended to July 1, 2004 for the secretary of state (with the consent of the co-directors of the election division) to file a certificate regarding the HAVA State Plan with the Federal Election Assistance Commission. (SEA 72, Sec. 201; Effective date: March 16, 2004; Citation affected: noncode)

MISCELLANEOUS TECHNICAL CHANGES

Correction of Reference to Election Sheriffs

A reference to election “sheriffs” (rather than “sheriff”) is corrected. (SEA 72, Sec. 12; Effective date: March 16, 2004; Citation affected: IC 3-6-6-38)

Printing of Names on Ballot

A technical conflict between two amendments to IC 3-10-1-14 made in 1999 has been reconciled. The law is restated in a new code section without substantive change and the former sections where the conflict occurred have been repealed. (SEA 72, Secs. 75, 76, and 194; Effective date: March 16, 2004; Citations affected: IC 3-10-1-14.1; 3-10-1-15 and 3-10-1-14 [repealed])

Reference to Presidential Electors

A reference to presidential electors and provisional ballots is corrected. (SEA 72, Sec. 100, Effective date: July 1, 2004; Citation affected: IC 3-11-3-2)

In-Person Absentee Voting in Lake County

References to casting an absentee ballot in the office of the circuit court clerk have been corrected to reflect that in Lake County, under current law, in-office absentee voting occurs at the office of the board of elections and registration (rather than the clerk). (SEA 72, Secs. 101 and 124; Effective date: March 16, 2004; Citations affected: IC 3-11-4-1 and 3-11-10-26)

Obsolete Procedure for Central Count of Absentee Ballots

An obsolete reference to the pilot counties who initially used the central count procedure in 1993 is repealed since the central count procedure is no longer a pilot program. (SEA 72, Sec. 138; Effective date: March 16, 2004; Citation affected: IC 3-11.5-2-2)